

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELAINE JANJANIN	:	CIVIL ACTION
Plaintiff	:	
	:	
vs.	:	
	:	
PHILADELPHIA HOUSING	:	
AUTHORITY, LARGHNE LAHM,	:	
JOHN VARALLO &	:	
BARBARA TURNER	:	
Defendants	:	NO. 98-4878

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 24th day of August, 1999, upon consideration of Plaintiff's Motion for Attorney's Fees (Document No. 19, filed February 8, 1999), Defendants' Answer to Plaintiff's Motion for Attorney's Fees, Plaintiffs' Reply Memorandum in Support of Her Motion for Attorney's Fees, Plaintiff's Supplemental Memorandum in Support of Her Claim for Attorneys Fees, and Defendants' Supplemental Memorandum of Law in Opposition to Plaintiff's Motion to Determine the Amount of Attorney's Fees, for the reasons set forth in the accompanying Memorandum, **IT IS ORDERED** that Plaintiff's Motion for Attorney's Fees is **GRANTED IN PART AND DENIED IN PART**. Plaintiff is **AWARDED** attorney's fees calculated in accordance with the accompanying Memorandum in the amount of \$4,320.00. In all other respects, plaintiff's motion is **DENIED**.

## MEMORANDUM

### **I. INTRODUCTION**

Plaintiff, Elaine Janjanin, commenced suit pursuant to 42 U.S.C. § 1983 and the United States Housing Act, 42 U.S.C. § 1437 against the Philadelphia Housing Authority ("PHA") and several of its employees, seeking declaratory and injunctive relief directing PHA to comply with arbitration awards dated February 27, 1998 and March 6, 1998. Pursuant to the award dated February 27, 1998, all non-contract repair work on plaintiff's PHA unit was to be completed within six months and all contract repair work to the unit was to be completed within one year. Pursuant to the March 6, 1998 award, PHA was required to reduce plaintiff's rent from \$684.00 per month to \$465.00 per month for the period from May of 1997 through February of 1998. PHA failed to comply with the awards.

The Complaint in this case was filed on September 14, 1998. On December 21, 1998, plaintiff filed a motion for summary judgment. While the motion for summary judgment was pending, the parties reported that the case was settled. Under the terms of the Settlement Agreement dated February 4, 1999, PHA agreed to pay plaintiff a fifteen percent rent abatement for nine months which totaled \$627.75.

Plaintiff seeks attorney's fees pursuant to 42 U.S.C.

§ 1988 in the total amount of \$5,088.50.<sup>1</sup> PHA objects to Plaintiff's Motion for Attorney's Fees, as amended, on the ground that (1) the requested hourly rate of \$250.00 per hour<sup>2</sup> is excessive, (2) plaintiff's attorney's hours expended are unreasonable, and (3) plaintiff was only partially successful. The Court will address each issue in turn.

## **II. DISCUSSION**

To recover attorney's fees under 42 U.S.C. § 1988, a party must establish (1) that it prevailed and (2) that the fee request is reasonable. PHA concedes that plaintiff is a prevailing party. The issue presented is the reasonableness of plaintiff's fee request.

The initial burden rests with the prevailing party to demonstrate the reasonableness of the fee request; to meet that burden, the fee petitioner must "submit evidence supporting the hours worked and the rates claimed." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Once that burden is met, the party opposing the fee request assumes the burden and must "challenge, by affidavit or brief with sufficient specificity to give fee

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<sup>1</sup>Plaintiff asked for \$4,319.50 in attorney's fees in her original motion. In her reply memorandum plaintiff claims attorney's fees for 2.9 additional hours spent in connection with the preparation and filing of the reply. In the reply plaintiff seeks attorney's fees in the total amount of \$5,088.50.

<sup>2</sup>The actual hourly rate requested by defense counsel, Michael Donahue, Esquire, is \$265.00 per hour.

applicants notice, the reasonableness of the requested fee." Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990) (citing Bell v. United Princeton Properties, Inc., 884 F.2d 713 (3d Cir. 1989)). "Once the adverse party raises objections to the fee request, the district court has a great deal of discretion to adjust the fee award in light of those objections."<sup>3</sup> Id. (citing Bell, 884 F.2d at 721).

The starting point for determining a reasonable fee under § 1988 is a calculation of the "lodestar." The first step in the "lodestar" method of calculating a reasonable attorney's fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Hensley, 461 U.S. at 433. Once determined, the Court may modify the "lodestar" amount based on the circumstances of the case. The most telling factor in making such an assessment is the degree of success obtained by the moving party. Id. See also Texas State Teachers Assoc. v. Garland Independent School Dist., 489 U.S. 782 (refining Hensley analysis and holding that "the touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute."); Farrar v. Hobby, 506 U.S. 103 (1992) (holding that court should consider extent of plaintiff's recovery in fixing

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<sup>3</sup> The actual hourly rate requested by defense counsel, Michael Donahue, Esquire, is \$265.00 an hour.

reasonable attorney fee award).

**A. Hourly Rate**

Judge Robreno, of this district, recently conducted a survey of the rates awarded to civil rights attorneys in connection with a motion for fees and costs. His conclusion was that "generally attorneys representing plaintiffs in civil rights cases are awarded an hourly rate of between \$150.00 and \$275.00, depending on the attorney's experience and the complexity of the case." Becker v. ARCO Chemical Co., 15 F.Supp.2d 621 (E.D. Pa. 1998). This Court agrees with that conclusion of Judge Robreno (notwithstanding the passage of time since the opinion was issued) and will, therefore, turn its attention to where within this range of \$150.00 to \$275.00 plaintiff's counsel falls. In this connection, the Court notes that Mr. Donahue is claiming an attorney's fee based on an hourly rate of \$265.00. That is the hourly rate assigned to Mr. Donahue under the fee schedule developed by his employer, Community Legal Services.

With regard to an attorney's reasonable hourly rate, the general rule is that counsel is entitled to be paid "according to prevailing market rates in the relevant community." Blum v. Stenson, 465 U.S. 886, 895 (1984); Ursic v. Bethlehem Mines, 719 F.2d 670, 676 (3d Cir. 1983). Such a rate should reflect an attorney's skill, reputation and experience. Blum v. Stenson, supra.

Michael Donahue has been employed as a staff attorney for

Community Legal Services since September of 1987. Between December of 1977 and September of 1987, he was employed as a staff attorney at Delaware County Legal Assistance Association, Inc. Since commencing employment at Community Legal Services, he has handled cases in the public housing unit, a unit specializing in public housing and Section 8 assisted tenancy cases. During that time he has successfully prosecuted at least six matters in the Court of Appeals for the Third Circuit and twelve class actions, all of which are listed in Exhibit A to plaintiff's motion.

Mr. Donahue has also handled in excess of 300 housing cases while employed at Community Legal Services and Delaware County Legal Assistance Association, Inc. These cases are listed in Exhibit A to the motion.

The parties have provided the Court with additional evidence of hourly rates charged by attorneys in the community for work similar to that performed by Mr. Donahue in this case. Based on that evidence and Donahue's extensive experience in the handling of housing cases, the Court determines that an hourly rate of \$225.00 for Mr. Donahue is reasonable. That rate is within the range of prevailing rates charged in this community for similar work and is a reasonable rate for performance of such work by attorneys of comparable skill, experience and reputation.

#### **B. Time Spent on the Case**

PHA also challenges several entries by plaintiff's attorney as unreasonable, claiming that time spent was either

excessive, unnecessary or was spent on tasks that could have been performed by a student, paralegal or secretary. The Court disagrees.

PHA challenges the spending of 2.3 hours drafting pleadings on September 6 and 13, 1998, 1.4 hours for client meetings and phone calls on four separate occasions, and 4.1 hours spent on matters relating to discovery. The Court concludes that the hours spent on pleadings and client meetings by Mr. Donahue were reasonable and that the hours relating to discovery (including the filing of a motion to compel) were required by the fact that PHA failed to comply with plaintiff's proper discovery requests in a timely manner.

It is regrettable Mr. Donahue was required to expend so much time on the case. However, the Court concludes the time was reasonably expended in an effort to enforce the arbitration awards of February 27, 1998 and March 6, 1998.

### **C. Degree of Success**

PHA argues that, after calculating the "lodestar" - multiplying the number of hours reasonably expended on the case by a reasonable hourly rate for Mr. Donahue's services - the "lodestar" should be reduced because plaintiff was only partially successful, citing Farrar v. Hobby, supra. The Court disagrees.

Plaintiff sought in her Complaint the following relief: (a) the enforcement of an arbitration award dated February 27, 1998 requiring defendant to make repairs to plaintiff's rental unit; (b)

enforcement of an arbitration award dated March 6, 1998 requiring defendants to correctly calculate plaintiff's monthly rent; (c) the correct calculation of plaintiff's monthly rent pursuant to 42 U.S.C. § 1437(a); and, (d) a supplemental claim for rent abatement due to PHA's failure to timely provide repairs to plaintiff's rental unit.

After suit was started, defendants credited plaintiff's rental account by \$2,190.00 in order to correctly readjust her rent retroactive to May of 1997 as it was required to do by the March 6, 1998 arbitration award. It is significant that PHA did not comply with the March 6, 1998 award until after suit was filed. Plaintiff also obtained a rent abatement of \$627.75.

PHA never completed the repairs to plaintiff's rental unit. That issue was mooted when plaintiff moved from her PHA unit in November of 1998. Plaintiff correctly points out that she would have succeeded on this claim had she remained in her PHA rental unit.

For the foregoing reasons, the Court concludes that plaintiff was a prevailing party and that the "lodestar" should not be reduced by any claimed limited success. The Court reiterates the fact that it is regrettable PHA is unwilling or unable to comply with arbitrator awards such as the awards in this case, making suits like the instant suit necessary.

PHA cannot complain that a court should not award counsel fees in a reasonable amount in a case as small as those customarily



presented by PHA tenants. The fact that a dispute might involve only small sums because the rental charges are not high or the repairs to housing units are not costly does not derogate from the right of PHA tenants to obtain compliance with arbitration awards. The Court also notes that the time an attorney must expend on such a case is not directly linked to the amount at issue - cases involving relatively small sums of money can present legal issues which require expenditure of considerable attorney time.

The submissions of the parties disclose that the problem presented in this case is one that recurs on a fairly regular basis. The continued inability or failure of the PHA to comply with arbitrator awards leads to the institution of lawsuits and, more often than not, results in a settlement or a ruling in favor of the plaintiff and an award of counsel fees. To better accommodate the needs of its tenants, the Court suggests to PHA that it focus on the development of a better compliance program and, where reasonably necessary because of unusual circumstances, the adoption of a procedure for obtaining extensions of the dates for compliance with arbitrator awards.

**III. CONCLUSION**

The Court concludes that 19.2 hours were reasonably expended in the handling of this case and that plaintiff's counsel, Michael Donahue, is entitled to an hourly rate of \$225.00. Thus, plaintiff is awarded an attorney's fee of \$4,320.00.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**